THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.7427 and 7428 of 2007

16.4.2007

Between:

Jammula Annapurnamma, W/o.Venkata Rao

… Petitioner

AND

The District Collector, Guntur District

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.7427 and 7428 of 2007

COMMON ORDER:

The petitioner in W.P.No.7428 of 2007, namely, Meruga Issac, alleges that his father late Alexander purchased land admeasuring Acs.5.56 in D.No.1204 situated at Ankireddypalem village in Guntur District from one Hilkuva, S/o.Madhava Rao Naidu, under registered sale deed dated 27.9.1950. The vendor of the property, Hilkuva, was assigned the land. Meruga Issac in turn sold an extent of Ac.1.00 under registered sale deed dated 12.11.1977 to Jammula Annapurnamma (petitioner in W.P.No.7427 of 2007). Both the petitioners allege that in January 2007 there was a rumour in the village that the Government is going to acquire the land. Annapurnamma got issued legal notices to the respondents claiming absolute ownership and denying the allegations of assignment with condition of non-alienation. Be that as it is, on 13.2.2007, the Tahsildar, Guntur Mandal, visited the land and stated that the land was allotted to Andhra Pradesh Transmission Corporation for construction of sub-station. At that stage, Annapurnamma filed W.P.No.2988 of 2007 alleging highhanded action on the part of the Tahsildar in attempting to dispossess her. The writ petition was opposed alleging that the land is assigned land. This Court disposed of W.P.No.2988 of 2007 on 19.2.2007 observing that unless and until the Tahsildar initiates necessary action under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity), petitioners cannot be disposed. Be that as it is, after receiving legal notice sent by Annapurnamma, third respondent sent a copy of the proceedings bearing Rc.No.2344/2006-ID, dated 17.2.2007. It is an order purportedly passed under Section 4 of the Act ordering resumption of the land from M/s.Inturu Venkata Reddy, Kukkamalla Nageswara Rao and Smt.Jammula Annapurnamma. In the said order, the Tahsildar, *inter alia*, stated that the land was assigned to Hilkuva

and it was purchased by the persons named in the order. Aggrieved by the same, Annapurnamma filed W.P.No.7427 of 2007 and Meruga Issac filed W.P. No.7428 of 2007.

Learned Counsel for the petitioners submits that the land was assigned to Hilkuva prior to 1950, but without condition of non-alienation, the same does not attract the provisions of the Act. He would urge that as per Section 2(a) of the Act, 'assigned land' means the land assigned by the Government under the relevant Rules with a condition of non-alienation and that the land assigned to Hilkuva was not encumbered with such a condition. Secondly, he submits that even if it is treated as assigned land, Meruga Issac as well as Annapurnamma being landless poor persons and being alienees prior to coming into force of the Act, are entitled for the benefit under Section 3(5) of the Act. Lastly, he would urge that as the sale by Hilkuva in favour of the father of Meruga Issac was in 1950 and the sale by Issac in favour of Annapurnamma was in 1977, both of them perfected their title by adverse possession. Before making these submissions, learned Counsel brought to the notice of this Court that Annapurnamma filed appeal before second respondent on 07.3.2007 along with an application for stay, in vain. In the meanwhile on 23.3.2007, officials of the respondents came to the land and laid foundation for construction of sub-station compelling the filing of the writ petition. Be it noted that Meruga Issac has not filed any appeal.

It is axiomatic that the remedy under Article 226 of the Constitution of India cannot be availed simultaneously along with alternative remedy. A reference may be made to **K.S.Rashid & Son v. Income-tax Investigation Commission**[1], **Carl Still G.m.b.H. v. State of Bihar**[2] and **Bombay Metropolitan Region Development Authority, Bombay v. Gokak Patel Volkart Ltd.**[3]. Secondly though Meruga Issac has not preferred appeal, still he has time to prefer appeal. Learned Counsel for the petitioners however expressed apprehension that pending the appeal by Annapurnamma before the RDO, if Andhra Pradesh Transmission Corporation or Distribution Company is allowed to make construction in the land, the appeal itself would be rendered futile. Keeping this in view, this Court is inclined to dispose of the matter in the following manner.

A week's time from the date of receipt of a copy of this order is granted to Meruga Issac, if so advised, to prefer appeal before the RDO, Guntur. If such appeal is filed or not, the RDO shall dispose of the appeal filed by Annapurnamma within a period of four weeks from the date of receipt of a copy of this order specifically adverting to the questions whether the land assigned to Hilkuva was encumbered with

the condition

of non-alienation/inalienation and whether Annapurnamma and Meruga Issac are entitled to seek benefit under Section 3(5) of the Act. It shall also be open to the petitioners to raise all other grounds before the RDO. Pending the appeal, if any construction is made on the land, it would certainly render the appeal futile and, therefore, this Court orders *status quo* as on today for a period of six weeks.

These writ petitions, with the above observations and directions, are accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

April 16, 2007.

NOTE:

Dispatch order copy by 23.4.2007.

(By order)

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[1] AIR 1954 SC 207

[2] AIR 1961 SC 1615

[3] (1995) 1 SCC 642